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22 CIGNA HEALTH AND LIFE INSURANCE COMPANY

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAHLON D. AND EMILY D.

Case No. 4:16-cv-07230-HSG

Plaintiffs,

v.
**STIPULATION AND [PROPOSED]
ORDER TO MODIFY THE
SCHEDULING ORDER**

CIGNA HEALTH AND LIFE
INSURANCE COMPANY and DOES 1
through 10,

Complaint Filed: December 19, 2016
Trial Date: None set
Judge: Hon. Haywood S.
Gilliam, Jr.

Defendants.

Referred to Magistrate Judge Robert M. Illman
for Discovery

1 Plaintiffs Mahlon D. and Emily D. (“Plaintiffs”) and Defendant Cigna Health and Life
2 Insurance Company (“Defendant”) (collectively “the Parties”) submit this stipulation and
3 respectfully request that the Court modify the Scheduling Order and supplemental discovery
4 briefing schedule based on the following:

5 **A. Current Status**

6 **1. Cross-Motions for Judgment**

7 This matter is governed by the Employee Retirement Income Security Act (ERISA). On
8 July 6, 2017 the Court took under submission cross-motions by the Parties to establish the
9 Standard of Review under ERISA that will be applied to this matter. On September 13, 2017 the
10 Parties stipulated to continue the briefing schedule on the merits of this matter until the Standard
11 of Review is decided by the Court. The Court granted the Parties’ stipulation on September 14,
12 2017 and entered a scheduling Order setting the date for the filing of cross-motions for judgment
13 as October 20, 2017 or three weeks after the Order on the standard of review is issued,
14 whichever is later.

15 **2. Motion to Compel Discovery**

16 Prior to the modification of the scheduling order set forth above, Plaintiffs filed a motion
17 to compel discovery on August 31, 2017. Defendant filed its opposition on September 14, 2017,
18 and Plaintiffs filed their reply on September 21, 2017. The motion to compel discovery was
19 referred to Magistrate Judge Nandor Vadas, and the Court held a hearing on the matter on
20 October 3, 2017.

21 During the October 3, 2017 hearing, the Court deferred ruling on the motion to allow the
22 parties to continue to meet and confer regarding the scope of the administrative record. The
23 parties’ current deadline to file letter briefs regarding any remaining discovery disputes
24 following the meet and confer process is 5:00 p.m. November 10, 2017. On November 6, 2017,
25 the case was reassigned to Magistrate Judge Illman for discovery matters.

26 **B. Reasons for the Requested Modification in the Briefing Schedule**

27 The Parties continue to meet and confer regarding the scope of the administrative record.
28 The Parties are working in good faith to resolve this issue but need more time to gather

1 additional information regarding the contents of the administrative record to determine whether a
2 resolution is possible. However, to resolve or litigate the discovery issues, the parties need to
3 know the standard of review in this matter as the nature and scope of discovery in an ERISA
4 action is dependent on the standard of review.

5 In the interest of judicial economy, the Parties aim to resolve all discovery issues in a
6 single hearing, including both the scope of the administrative record and any other discovery that
7 may be appropriate depending upon the applicable standard of review. The Parties further wish
8 to ensure that adequate time is available for full briefing on the merits once the discovery issues
9 are resolved.

10 **C. Suggested Modifications**

11 The Parties jointly request that the Court take the current briefing schedules for the cross-
12 motions for judgment and the pending discovery motion off calendar. Once the Court enters its
13 Order on the standard of review in this action, the Parties propose to meet and confer to attempt
14 to resolve any outstanding discovery issues in light of the applicable standard of review and, if
15 necessary, refer the discovery matter to Judge Illman for resolution. The Parties will jointly
16 advise the Court of a proposed briefing schedule for cross-motions for judgment on the merits no
17 later than thirty days after entry of the Order regarding the standard of review.

18
19 Dated: November 8, 2017

Respectfully submitted,

20 **DL LAW GROUP**

21
22 By: _____ /s/
23 David M. Lilienstein, Esq.
24 Katie J. Spielman, Esq.
25 Attorneys for Plaintiffs,
26 MAHLON D. & EMILY D.

27 Dated: November 8, 2017

Respectfully submitted,

28 **OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

1 By: _____/s/
2 Sean P. Nalty, Esq.
3 Shivani Nanda, Esq.
4 Attorneys for Defendant,
CIGNA HEALTH AND LIFE INSURANCE
COMPANY

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1 **[PROPOSED] ORDER**

2 Based on the stipulation of the Parties set forth above, and GOOD CAUSE appearing, the
3 Court hereby modifies the Scheduling Order. The current briefing schedule for the filing of
4 cross-motions for judgment three weeks after entry of the order on the standard of review is
5 taken off calendar. The current deadline to file further letter briefs regarding the pending Motion
6 to Compel Discovery is taken off calendar.

7 The Parties are hereby ORDERED to meet and confer to attempt to resolve any
8 outstanding discovery issues following the entry of the Order setting the standard of review in
9 this action. If necessary, the parties will file letter briefs of no more than two pages outlining
10 remaining points of contention. The Parties are further ORDERED to jointly advise this Court
11 of a proposed briefing schedule for cross-motions for judgment on the merits no later than thirty
12 days after entry of the Order regarding the standard of review.

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14 **IT IS SO ORDERED**

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16 Dated: 11/9/2017



17
18 Hon. Haywood S. Gilliam, Jr.